



# **Transparency Serbia**

## **Overview of activities**

### **July 2019**

**Newsletter number 7/2019**





## *Activities*

On Monday, July 30, at the Faculty of Political Sciences, a roundtable on election conditions was organized by the Open Society Foundation, attended by TS representative Zlata Đorđević. At a meeting attended by representatives of the civil sector, professors and representatives of the ruling and party opposition, CRTA and Cesid presented their recommendations for the establishment of the rule of law during the elections. The round was closed to the public.

The Assembly of the Transparency Serbia Association was held on July 12th. New members of the Supervisory Board were elected (Marijana Trivunović, Dragoslav Veličković, Nikola Matić) and work reports for 2018, work plan for 2020 and internal acts of the association were adopted.

At the request of Hong Kong's most famous and oldest anti-corruption Commission, which had world-renowned results over the past 45 years, a meeting with TS representatives was held on July 19. Guests from Hong Kong were introduced with the most important features of the anti-corruption system in Serbia and with the main challenges in the implementation of regulations.

On the other hand, we took this opportunity to learn about their experiences in applying the method for detecting corruption and for educating citizens about corruption, conducted in Hong Kong from a young age. It was very useful to get acquainted with the experience of the Commission in the main rules on the reverse burden of proof of the tax property of public servants, which was often used in the detection of corruption in previous years, and in Serbia is current because of implementation of Law on Anticorruption Agency, regulation on organized criminal groups and the announced Law on the Examination of the Origin of Property and Special Tax (which, unlike Hong Kong, in the current draft has no focus on public officials and officials).

It is also an interesting solution from Hong Kong, where the Commission has responsibilities in controlling the heads of private companies doing some public interest work, while the problem of party appointing directors of public companies is unknown there, because the jobs of such companies in Serbia are done by the private sector there. The meeting was attended by program director Nemanja Nenadić and legal advisor Maja Karišić in front of the TS.

On Monday, July 29<sup>th</sup>, Zlata Đorđević participated at a meeting where the report on the implementation of the third Partnership Action Plan for Open Government in the Republic of Serbia 2018-2020 was presented. The report was prepared by Civic Initiatives with the support of consortium partners (consisting of Transparency Serbia, Online Media Association, Leskovac National Parliament, Leskovac Education Center and the Media and Reform Center Niš), which is working on the implementation of the project "Support for participation and joint development of national and local Open Governance Partnership Action Plans", which is financially supported by a POU donor fund.



Đorđević spoke about the obligation of the government integrity, which is related to the assistance and monitoring of the implementation of local anti-corruption plans. By June 14th, 97 out of 145 local government units adopted the plan, and only 21 formed a body to monitor and implement the LAP. Đorđević stated that the lack of control over the implementation of the adopted obligations is one of the main problems with the LAPs, and that the deadlines in most local self-governments expired and measures are not fulfilled.

Program Director of the TS, Nemanja Nenadić, met with representatives of the OECD / SIGMA on July 12, at the invitation of the State Audit Institution. Nenadić spoke about TS's experience in using the SAI report, about the suggestions made by TS for the operation of the SAI, about certain initiatives adopted by this institution, about the possibilities to improve the legal framework for control of public finances and the fight against corruption in general. In particular, there was talk of National Assembly and local authorities' acting with the audit reports, the need for audits of public procurement, public-private partnerships and state aid, as well as the findings of the Open Budget Index and other surveys conducted by the TS.

Public debate on the revised Draft of the Local Anti-Corruption Plan for the city of Vranje was held on July 22th in the large hall of the City Assembly. Revising the Draft Local Anti-Corruption Plan, Vranje worked in cooperation with USAID and Transparency Serbia. The City of Novi Pazar completed the development of the Local Anti-Corruption Plan and the selection of bodies to monitor its implementation. The whole process was done with the support of Transparency Serbia. The LAP and members of the Local Anti-Corruption Forum were presented at a conference on July 26th.

We have posted on our Youtube channel a panel on corruption, from the plenary session of the EU National Convention, organized on 10 June 2019 with the submission of a new report from the European Commission on Serbia. This panel was organized and moderated by Transparency Serbia. In addition to representatives of our organization (Zlata Đorđević and Nemanja Nenadić), the panel was attended by Minister of Justice Nela Kuburović, Director of the Anti-Corruption Agency Dragan Sikimić and Slobodan Georgiev from BIRN Serbia. Transparency Serbia within the NKEU coordinates the work of the Chapter 5 group (public procurement and public-private partnerships) and actively participates in the work of the Chapter 23 group (which covers the rule of law and the fight against corruption within that group). A more extensive panel report is available on the TS website.

In July, 274 news or articles were published about the activities of our organization, i. the news in which representatives of the TS were quoted. We have put a number of initiatives and analyzes on the TS website, as well as requests and responses from state authorities..

***We are presenting a selection of texts that we published in the previous month:***



## *Under the magnifying glass*

### **Secrecy of contracts with Fiat and others**

July 4<sup>th</sup>, 2019

The fact that significant provisions of the contract concluded ten years ago on the obligations of the state are secret, is not a justification to continue such a practice, but a reason to prevent secrecy in the future.

President Vučić's statement on the contractual secrecy of giving to Fiat, "for which he is not guilty," is a good reminder to see if Serbia changed anything in regulations or practices that would prevent the state's business from being transparent.

Two contracts with the largest financial consequences, concluded in the last seven years, on the joint venture Belgrade Waterfront and Air Serbia, have been announced. However, this was done months after the signing, when all approvals were obtained and it was no longer possible to legally challenge the contractual provisions.

Furthermore, there are still contracts that are secret in full, contrary to the law, as in the case of Smederevo ironworks management contract. There is also a large number of public-private partnership contracts, such as a Belgrade airport concession, where some details were published, but not contracts.

The only sure way to prevent the adverse effects of secret treaties would be a



constitutional norm that would make such provisions null. In the meantime, enforcement of all Commissioner's decisions mandating the disclosure of contracts on the appeals, should be ensured.

Namely, Law already knows the possibility of protecting the legitimate trade secrets of the private partners of the state, and in each particular case, the law

determines which provisions must be disclosed in the public interest, so that absolute secrecy can never be justified.

In addition, it is important to prevent the intended corruption of that law, based on the 2018 draft, which provides the abolition of the obligation to act on requests by majority state-owned enterprises. On the contrary, even those state-owned minority companies should share with the public some information related to the use of public resources.

### **Fiscal Strategy Draft (almost) on time**

July 5<sup>th</sup>, 2019

For the first time since 2011, the Ministry of Finance prepared the Fiscal Strategy, a document that by law precedes the drafting of the budget for the next year before the budget itself is made.

Although practice showed that the Government and the Parliament often deviated from these three-year planning documents, even at a time



when they were made on time, the fact that the Fiscal Strategy appeared close to the deadline set by the Budget System Act gives hope that at least in the in terms of obeying that rule, things will start to improve.

However, we did not know that the Fiscal Strategy was drafted from the competent Ministry of Finance, which did not publish the draft, but from the Fiscal Council, which published its opinion on this document.

We remind that the failure to meet the deadlines for the preparation of the Fiscal Strategy, the budget proposal and the failure to adopt the final budget statement are the main reasons for Serbia's poor placement in the international open budget survey conducted by Transparency Serbia for our country.

### **Important statement of the Misdemeanor Court**

July 8th, 2019

The Misdemeanor Appellate Court stated that the association is authorized to initiate misdemeanor proceedings for denying the right of access to information.

This view is significant because, in situations where the authorities ignore the requests of the claimants, in addition to lodging a complaint to the Commissioner, this additional tool can be used to pressure the authority to fulfill its obligation.

Namely, the mere failure of the authorities to act on the request for access to information within a deadline (15 days or 48 hours for individual information) is a violation under the Law on Free Access to Information.

According to the Law on Misdemeanors, the procedure can be initiated by the Prosecutor, the body competent for monitoring the implementation of the law (administrative inspection or the damaged party).

The problem was the interpretation of the term "damaged", because it refers to a person whose personal or property rights have been violated by the failure to act, or in recognition of the property damaged by associations, given such a definition.

Transparency Serbia uses this opportunity to point out that the misdemeanor responsibility of the authorities, and responsible persons in the authorities for failure to act upon the request, cannot be a substitute for other forms of liability. This type of behavior, when it seems intentional or when it is persistently repeated, should result in the initiation of procedures for the dismissal of the head of state authority

### **Hiding information on state-owned enterprises**

July 10th, 2019

The danger with the adoption of changes to the Law on Free Access to Information, which envisages that state-owned enterprises are excluded from the obligation to provide data, is illustrated by the example with the Port of Novi Sad.

As early as March 2019, TS commented on developments regarding the privatization of the Port of Novi Sad. At that time, it was announced that one financial offer was declared successful.

After the unsuccessful tender, with a starting price of 15 million€, at the second attempt was accepted the (starting) price of about 8 million € and the investment over the next three years





“probably more than 15 million€ (€ 14.9 million was the minimum according to tender documentation), of which 5 million to the port infrastructure.

Many questions regarding this procedure remained unanswered.

Blicpublishes now a text about a "serious fraud" in Port, and the concealment of data on the debts and claims of this company.

The newspaper says that the customer's management hid data on claims of 113 million dinars and that in just three months, after the offer for privatization was accepted, bonuses of 97 million dinars were paid to employees.

## **Subway Construction: secret memoranda, mysterious report and some public procurement violation**

July 16th, 2019

From the whole story of the construction of the Belgrade subway so far, it can be concluded that the companies from China and France will be involved in the work, that the source of financing is not yet known and that the provisions of the Law on Public Procurement and the Law on Public-Private Partnership which make mandatory bidding for a job, will not be implemented.

Instead of Serbia and Belgrade, as contracting authorities, being aware in advance what they need, so they would look for a constructor to conduct the work, it seems that arrangements are made right now even on the subject of the works.

Previously, plans for the metro routes have already been modified so as to adapt to the needs of investors of one current and several



future projects, instead of finding a solution to the transportation problems of existing urban settlements first.

During the visit of the French President and members of the delegation, two members of the Government of Serbia and the Deputy Mayor of Belgrade met with the delegations of the French companies “Eژیs” and “Alstom” on the implementation of the “Belgrade Metro” project.

The Prime Minister announced that French and Chinese companies would bring new technologies to the project. This means that a decision has already been made on their engagement, although no procedure has been implemented.

At the same time, she stated that "the most important thing is to determine an adequate financing structure for the project", which indicates that the money has not yet been provided.

“At the meeting it was stated, among other things, that for the successful realization of the project it is important to find a model that will enable each of the participants, in accordance with the knowledge and technology at their disposal, to make the greatest contribution, and what will be discussed in the coming period. ”



A report from the Government's website indicates that "there have been talks about the next steps and how the project will be implemented, emphasizing the importance of speeding up the process to start construction by the end of next year." Serbian public is not informed of what steps could be taken.

Readers are left to figure out what the content of the studies the company „Ežis“ is working on. Namely, the report says that the French firm "recently completed a previous feasibility study, and is currently doing a feasibility study."

At the end of the report from the session, another puzzling sentence was found: "The interlocutors concluded that both sides want the Belgrade subway to be a successful project, but also to continue discussions with Chinese company "Power China", with which the Memorandum of Cooperation was signed, regarding the realization of the "Belgrade Metro" project.

Thus, it remained unclear who would hold talks with the Chinese company about the construction of the subway, why it was necessary to stress that both sides want the "Belgrade subway" to be a successful project, whether "successful" meant that the Serbian and French agreements were successful sides or the construction itself etc.

At least part of these questions could be answered by considering the commitments Serbia has already made to its Chinese partners. However, the Belgrade metro agreement was refused by the Ministry of Construction to provide Transparency, citing the confidentiality of the agreement and the lack of consent of the Chinese apartment for disclosure.

## **Contractor Gifts**

July 23rd, 2019

Data from the "Krik" story, according to which one of the biggest contractors in "Belgrade Waterfronts" gave gifts to the brother of the former Belgrade mayor, create suspicion of corruption.

It is widely known that public procurements are often subject of corruption and backlash to decision makers, even when there is open competition. With this in mind, it is logical to assume that the situation is significantly worse in situations where public funds are spent without public procurement. This is exactly the case at "Belgrade Waterfronts". About 90 hectares of the Sava coast in the capital was given to a company under this name. Although the Republic of Serbia invested in this project agricultural land of several hundred million euros value, as well as many other things (buildings, infrastructure, expropriation ...), and a private partner whose company is registered in the UAE 150 million and more loans, participation owned is not proportionately invested. Serbia has become only a minority owner (32%) of businesses that builds, sells and rents residential and commercial space in "Belgrade Waterfronts".

One of the bad consequences of such agreement is that procurements of works for the purposes of construction of "Belgrade Waterfronts", including not only the construction of buildings but also public buildings (bridge, streets) is not covered by the Law on Public Procurements, but this company can decide who the contractor will be, as if it were a real private investor.



In reality, it is a firm that manages public resources of significantly greater value than the investment of a private partner, and the public interest should be protected in its operations.

For example, if the construction of buildings is paid more than it is worth or more expensive than it has to for the value obtained, the total profit of the enterprise will be less, and therefore the revenues for the state.

The KRIK text does not talk about how "Belgrade Waterfronts" selects contractors and how much it pays, and therefore it is not yet known whether part of the state's potential revenues from this construction venture is drawn through inflated costs.

However, it is said that a construction firm that is doing a significant portion of the work ("Millennium Team") and its affiliates give gifts to the former mayor's brother.

Despite the fact that this private company can waste its resources at the request of the owner, it is not logical to think that any business owner would without reason reduce their own income. On the contrary, it would be logical to think that he was forced to give such a gift, in order to reciprocate the jobs he had received, or to offer such a gift himself.

The situation in which the donor is associated with one of the main promoters of this way of implementing the project "Belgrade Waterfronts" within the Serbian authorities, further reinforces this doubt. The logic and doubts published in the media, even when substantiated by evidence, have rarely been sufficient reason for the prosecution to examine the case.



This story is another reminder that citizens must have the right to access information considering the work of state-owned enterprises, and not only when that ownership is half-way, but also when the state has outsourced significant resources to those enterprises.

For example, if the information regarding contracts concluded by "Belgrade Waterfronts" are made known to the public, it would be far easier to determine if it has any excess costs that diminish the profit of the state and the city.

### **Can members of Parliament be charged with criminal offenses without arguments and consequences**

July 24th, 2019

Charges made by members of Parliament against citizens, political opponents, former and current officials remain unresponsive, even though they relate to criminal offenses.

As a result, those who are innocently accused remain permanently slandered. Likewise, the possible guilt remains unspecified.





Some members of Government are facing this problem too, asking the prosecution to investigate allegations from the parliamentary debate. However, the only way to get the prosecution to act, would be to file a criminal complaint, but there is another problem - a person who reports himself although he knows he is not guilty, would commit the crime of false reporting.

It is also not uncommon for members of Parliament to accuse those whose public appearances or work they do not like, as recently happened to opinion pollster Zoran Gavrilovic and the former Commissioner for Information, during the parliamentary debate on the institution's work. Recently, words could be heard from the assembly booth, that could be interpreted as a threat to the security of the journalist "Danas"

In this connection, the question arises as to whether deputies can be punished for baseless charges. There is an act of false reporting in the Criminal Code.

It is clear that those who intentionally file a groundless criminal complaint against a person may be prosecuted, but it is unclear whether "reporting" and under what conditions a public presentation of such a charge can be considered.

However, members of Parliament cannot be held accountable at all for criminal and other responsibility "for expressing an opinion in the exercise of their parliamentary function".

Therefore, a timely response by the public prosecutor's office remains the only effective measure for protecting the interests of the injured.



## *Press issues*

### **As of today, two thirds of public administration without legal management**

July 1st 2019

As of July 1<sup>st</sup>2019, **around two thirds of public administration institutions** of the Republic of Serbia not only that they **don't have** directors elected through competition procedure, in compliance with the law adopted in late 2005, but they don't even have **legal acting directors**. Transparency Serbia (official chapter of Transparency International) constantly warns to illegal status ever since in the early 2010 for the first time deadline for completing the competitions expired (31.12.2010)! However, expiration of period, legal changes, action plans and messages from the EU **were not enough for the Government to change practice of appointing easy to replace acting servants** to posts, instead of professionals whose release has to be elaborated.

Today, namely, in compliance with the law, **mandate of all acting public servants expired**– assistant ministers, secretaries of the ministries, directors and other managers of government offices, administrations and special organizations. This deadline for termination of „acting“ status in state administration, current Government imposed itself, with changes of the Law on State Servants from 2018. Report from the last session of the Government best states about the absence of will to implement this law. On this session, held **just four days ago (27. 6. 2019.)**, **Government appointed as much as twenty acting servants**, three in the Ministry of Finances, two in the Ministry of Culture and Informing, one in the Ministry of Agriculture, five in the office for Kosovo and Metohija, three in the Office for Information Technologies and Electronic Government, three in the State Attorney's Office and by one each in the Public Procurement Office, Republic Direction for Commodity Reserves and Direction for Property.

Transparency – Serbia emphasizes that **absence of data** on fulfilling of this obligation by the Government **represents huge problem**. Namely, so far, unique list of state servants appointed by the Government was not published. We emphasize that citizens of Serbia can have the insight into complete information only by detail search of documents from each session of the Government, all published competitions and Systematization Rulebook of Information Booklets of each of the several dozens of public administration organs, and with the condition that they are published and updated. Our organization didn't obtain such list not even by several requests for free access to information of public importance, although it is obvious that it should exist. Namely, for years Government of Serbia delivers aggregated data on this matter to European Commission. According to last published data, from the end of 2018 there were 370 posts in high level public management, out of which only 107 (29%) was filled out on the basis of implemented competitions, while 263 (71%) posts were filled out by acting servants.

We also remind that this **serious insult to the rule of law** is unfortunately no isolated case. Namely, „acting“ status, that enables direct control of public sector institutions by high level politicians, and in direct opposition to legal provisions, exists largely in state owned enterprises.



## **The public denied the debate on candidates for Commissioner**

July 3rd 2019

The process in which the Committee on Culture and Information proposed to the National Assembly Milan Marinović as Commissioner for Information of Public Importance and Protection of Personal Data, did not ensure that the selection of candidates was made on the basis of an assessment and comparison of their qualifications, previous specific experience in the areas of competence of the Commissioner and work plans. The reasons why the candidate voted by the Board is better than the non-candidate, remained unknown to the public. In the absence of pre-set evaluation criteria, selection was made solely by voting, the outcome of which indicates that the main criterion for deciding was who proposed the candidate, not his / her expertise.

The decision of the Committee on Culture and Information on Marinović's candidacy was preceded by only a five-minute presentation of each candidate, answering the candidate's questions and voting for each individual candidate. Of the 11 members present, 10 have voted in favor of Milan Marinović, nominated by the SNS parliamentary group. The session was not attended by 6 members of the Committee from the opposition parliamentary groups.

Since members of Parliament have to vote in favor or against the proposed candidate, it is clear that the election of the first person of an important independent institution is proceeding in a manner contrary to the principles advocated by more than 100 civil society organizations, since November last year. The candidates were not given the opportunity to inform the public and members of Parliament (except members of the Committee) of their professional work, recommending them for this function. The process also did not provide introducing of public with the proposals and plans of the future Commissioner to solve the problem of continuing deterioration in the area of access to information of public importance, that has been ongoing since 2016, and the responses to the challenges posed by the implementation of the Law on Personal Data Protection.

Considering the whole course of the process, civil society organizations are calling on the Ministry of Public Administration and Local Self-Government to introduce in the draft amendments to the Law on Free Access to Information of Public Importance, provisions that would guarantee the application of the criteria of openness and transparency in the election of commissioners.

The signatories of this statement are Belgrade Center for Security Policy, CRTA, Committee of Lawyers for Human Rights - YUCOM, Partners for Democratic Change Serbia, SHARE Foundation, Transparency Serbia and Open Society Foundation Serbia.



## "Security sensitive" data

July 12th 2019

In a debate over the Annual Report of the Commissioner for Information of Public Importance for 2018, member of Parliament, Aleksandar Martinović accused the institution for being "the service and branch" of several non-governmental organizations, including Transparency Serbia, "which in most cases requested for very security sensitive data. "

This statement contains untrue information, not only regarding the work of the Commissioner, but also the nature of the information requested by our organization, as it clearly cannot be considered "security sensitive".

Namely, it is true that Transparency Serbia requested, and in 2018 Commissioner ordered that the following information be disclosed: 1) the duration of the election campaign ads by individual presidential candidates and TV stations; 2) information on the alleged meeting between representatives of the City of Belgrade and BK Group regarding the "Tesla City" project; 3) information on the realization of public purpose projects in the area of construction of the project "Belgrade Waterfronts"; 4) working biographies of the members of the Supervisory Board of a public utility company in Pirot. The authorities did not yet act on these requests, although they are obliged by the law, because the Commissioner's decisions are final, enforceable and binding.

All of this information was otherwise available to Member of Parliament, Martinović, and others who participated in the debate and supported it, since the review of Commissioner's outstanding decisions is an integral part of the annual report on the implementation of the Law, which was submitted to the National Assembly.

At the same time, we are reminding that there are outstanding decisions to the appeals of Transparency and from earlier years. Among other things, there are requests for documents related to the fulfillment of obligations related to the appointment of members of the supervisory boards of public companies, the justification of the proposal of the public-private partnership project for the Airport, the procedure that preceded the conclusion of the lease agreement for Airbus A330 aircraft for Air Serbia needs, related with the costs of advertising of public companies, renting "GSP" buses for transportation of participants of the rally, as well as the contract on the provision of management and consulting services in the business of PD "ŽelezaraSmederevo", concluded on March 25, 2015, between the Republic of Serbia, PD "Železara" Smederevo Ltd. , "HPK MANAGAMENT "d.o.o. from Belgrade and "HPK ENGINEERING B.V."



In connection with Martinović's joint statement, media group and NGO he mentioned, issued a press statement:

**Serbia's ruling SNS MP denies Constitutional rights to journalists and NGOs**

We call on the Government and Parliament to stop using institutions for a showdown with independent media and organisations on the same day when Serbia signed a joint statement obliging itself to protect media freedom.

The news desks of CINS, BIRN, Isinomer, N1 TV, Vreme weekly, and NGOs Transparency Serbia and Crta demand that the abuse of institutions for the showdown with independent media and the civil society organisations stops.

During the debate on the Commissioner for Information of Public Interest report, Martinovic said on Wednesday that the requests for access to information of public importance which the organisations were sending to the state institutions had "tendentious questions aimed at bringing down the security system of the Republic of Serbia."

"Serbia's citizens should know that we primarily talk about those who mostly demanded, and I say that again, security-sensitive information, like CINS, KRIK, BIRN, BIRODI, Natasa Kandic, Nemanja Nenadic and so on.

An SRS deputy Vjerica Radeta joined Martinovic in insults and attacks, adding that our organisations were known for "anti-Serb activities."

All the requests that our media and organisations were sending to the state institutions in 2018 as well as in early years were sent in line with the Law on Free Access to Information of Public Importance and were in the public interest.

The media whose primary function is to inform the public were requesting information to truthfully and timely report to the public about the issues vitally important to the people of our country.

The citizens have the right to know that some officials forged their doctorates, that they were illegally employed in schools, do they tell the truth during public addresses, and to know about other wrongdoings and maybe the violations of laws.

Accusing the journalists and the civil society organisations of damaging the interests of our country by requesting information are, among other things, the continuation of the pressure the independent and professional media are exposed to.

At the time when Serbia is working to limit the access to information by changing the law and appointing a new Commissioner for Information of Public Importance, we recall the UN Universal Declaration on Human Rights which guarantees that right. Serbia's Constitution also stipulates that every citizen "has the right to access information possessed by state institutions and organisations which are trusted with public jurisdiction by the law."





We call on Aleksandar Martinovic and the deputies who supported him to explain in what way the publication of such information would affect Serbia's security, while we call on the Government and Parliament not to use the institutions for a showdown with independent media and organisations.

This statement is signed by Center for Investigative Journalism in Serbia – CINS, N1 TV, Istinomer, Centre for Investigating, transparency and responsibility - CRTA, Balkan Investigative Network - BIRN, Vreme weekly and Transparency Serbia.



**IMPRESUM**

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